



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 150] CHANDIGARH, FRIDAY, NOVEMBER 25, 2022 (AGRAHAYANA 04, 1944 SAKA)

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 21st November, 2022

No. 13/1/9907-HII(2)-2022/17294.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 102/2016, dated 27.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PREETI CHHABRA, AGED 29 YEARS, D/O SHRI ASHOK SATYA, R/O HOUSE NO. 1517-B, SECTOR 32-C, CHANDIGARH (Workman)

AND

1. GOVERNMENT MEDICAL COLLEGE & HOSPITAL, CHANDIGARH, SECTOR 32, CHANDIGARH THROUGH ITS MEDICAL SUPERINTENDENT/ DIRECTOR PRINCIPAL.
2. S.L. BAJAJ, CAMP OFFICE, GMCH, SECTOR 32, CHANDIGARH.
3. S.L. BAJAJ, HOUSE NO. 175, LIG-LIE, PHASE-I, PATIALA, PUNJAB.
4. AMANDEEP KAUR, PCS, FORMER ADDITIONAL DIRECTOR (ADMINISTRATION), GMCH-32, CHANDIGARH (Management)

AWARD

1. The workman, Preeti Chhabra, has raised the demand notice under Section 2-A of the Industrial Disputes Act, 1947 (*hereinafter in short called as 'ID Act'*). After the failure report Memo No.1409 dated 23.05.2016 of the Assistant Labour Commissioner-cum-Conciliation Officer, Union Territory Chandigarh the workman has filed the statement of claim under Section 10 of the ID Act alleging therein that the workman was appointed to the post of Medical Social Worker on 02.04.2012. The workman was drawing salary ₹7,500/- per month. The workman continuously and regularly remained in the employment of the management from 02.04.2012 to 04.06.2014. During the service period the workman worked honestly and to the satisfaction of the superiors. On 06.06.2014 the management terminated the services of the workman stating that her services are no longer required. The action of the management to terminate the services of the workman is highly illegal, unlawful, unjustified, uncalled for and inoperative, liable to be set aside *inter alia* on the grounds that the workman has completed more than 240 days service in a calendar year. No compensation was given before terminating the services. No written notice was ever given to the workman before terminating

(1149)

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her services by the managements. The appropriate Government was informed about the termination of services of the workman. The post is still existing. Juniors and new persons have been appointed to the post of File Restorer. No inquiry was ever held before terminating the services of the workman. The matter was reported to the Labour Inspector concerned but the management was adamant and nothing could be settled. The demand notice dated Nil under Section 2-A of the ID Act was raised before the Assistant Labour Commissioner, Union Territory Chandigarh but the conciliation proceedings got failed so the matter was referred to this Court for adjudication as per law vide Memo No.1409 dated 23.05.2016 issued by the Assistant Labour Commissioner-cum-Conciliation Officer, Union Territory Chandigarh. The workman has not filed such or similar case earlier in the matter and this is the first case in the subject matter. This Court has got jurisdiction to hear and decide the present case. The workman has got no other remedy except to approach this Court by way of the statement of claim. Prayer is made that the workman may be reinstated into service with full back wages and all attendant benefits and consequential relief of increments and revised pay etc. be awarded with interest @9% per annum. The seniority may also be granted along with consequential relief and benefits. The statement of claim may be allowed in the interest of justice and award may be passed accordingly.

2. Upon notice, management Nos. 1 & 4 appeared through Law Officer and contested the claim statement by filing written statement on 19.02.2018 wherein the preliminary submissions are made to the effect that the workman Ms. Preeti was assigned the job of Data Entry Operator through contractor but she refused to accept the same. Therefore, the workman is not entitled for any relief from the answering respondents. After replacing her services by the contractor, an opportunity to the workman was given and allowed to deploy her for the same post i.e. Medical Social Worker and the contractor M/s S. L. Bajaj was asked to post her in the Department of Ophthalmology vide office letter No.GMCH-1EA2(54)/2014/2018 dated 29.10.2014 but she failed to join the services and the candidate in the waiting list was engaged by the contractor.

3. Further on merits it is stated that Ms. Preeti was deployed as Medical Social Worker by the service provider M/s S. L. Bajaj, Patiala in Government Medical College & Hospital, Sector 32, Chandigarh (GMCH). As per service agreement, the persons so deployed by the service provider for the execution of agreement shall be his employees for all intents & purposes and in no case there shall be any relationship of employer and employees between GMCH and the said persons either implicitly and explicitly. The workman so deployed by the contractor in the year 2012 was paid wages as per the rates fixed by the Assistant Labour Commissioner from time to time. Thereafter, w.e.f. 12.11.2014 it was decided by the competent authority to give wages to the said workers as per the rates fixed by the Deputy Commissioner, U.T. Chandigarh. The fact that the workman continuously and regularly remained in the employment of the management from 02.04.2012 to 04.06.2014 needs no reply in view of the submissions made above. The workman was habitual of taking leaves due to which the work of the department was suffering. The contractor therefore was asked to replace her services by providing her substitute immediately vide their office letter No.GMCH-1EA-2(54)-2014/20906 dated 04.06.2014. The settlement, if any, has to be made and the same has to take place between the contractor and the workman. Rest of the contents of claim statement are denied as wrong except para No.9 which is replied being matter of record and paragraph Nos. 10 to 12 which are replied in a formal manner. Prayer is made that the claim of the workman against the answering management may be dismissed with costs being devoid of merits.

4. On notice, on 14.12.2016 Shri Manjit Singh - Manager has filed authority letter on behalf of management No. 2 & 3. Vide order dated 03.04.2018 an application filed by the workman seeking to amend title of the case was allowed and notice to management No.2 & 3 was ordered to be issued. On 18.07.2018 Shri Sanjeev Kumar - Supervisor filed memo of appearance on behalf of management No.2 & 3. On 07.08.2018 management No.2 & 3 filed joint written statement.

5. In the written statement filed by Shri S. L. Bajaj on behalf of management No. 2 & 3, it is stated that the answering management S. L. Bajaj is working as contractor for the supply of manpower to GMCH, the principal employer vide agreement dated 29.08.2011 which was extended from time to time. The workman was also deployed as a Medical Social Worker to the above said GMCH on 02.04.2012. The hospital authorities conveyed their dissatisfaction with the work of Smt. Preeti Chhabra and the answering management was asked to replace Smt. Preeti Chhabra. In view of Clause 9 and 13 of the agreement dated 29.08.2011, GMCH

is the principal employer and the answering management has no other alternative but to replace Smt. Preeti Chhabra. Clause 13 of the agreement dated 29.08.2011 provides that :

"In case any person so deployed by the service provider does not come up to the mark or performs his / her duties improperly or indulge in any unlawful act or disorderly conduct, the service provider shall take suitable action against such employees. In case of any complaint / defect / deficiencies so pointed out by the said authorities in writing, the service provider shall immediately attend to the same and replace the particular person(s) so deployed."

Accordingly, the answering management had no other alternative but to replace Smt. Preeti Chhabra in view of the written directions of GMCH, the principal employer. However, in case GMCH is willing to avail the services of Smt. Preeti Chhabra, the answering management has no objection to the same.

6. Along with the written statement photocopy of service agreement dated 29.08.2011 executed between the Administrator of Union Territory Chandigarh through Director, Principal, Medical College & Hospital, Chandigarh with M/s S. L. Bajaj, a company registered under the Companies Act, 1956.

7. Despite availing repeated opportunities authority letter of behalf of management No. 2 & 3 was not filed. On 13.01.2021 none appeared on behalf of management No.2 & 3. Thus, *vide* order dated 13.01.2021 management No.2 & 3 were proceeded against *ex parte*.

8. On 03.04.2018 replication to written statement of management No.1 & 4 filed wherein the contents of the written statement are denied and averments of the claim statement are reiterated. Replication to the written statement of management No.2 & 3 not filed.

9. From the pleadings of the parties, following issues were framed *vide* order dated 21.01.2020.

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Relief.

10. In evidence, the workman Preeti Chhabra examined AW1 Gurmeet Singh - Assistant, ESIC, Branch Office, Chandigarh who brought the summoned record pertaining to the workman Ms. Preeti Chhabra and tendered into evidence documents i.e. contribution sheet of the workman relating to Employees' State Insurance scheme for the period w.e.f. 01.04.2011 to 30.09.2015 *vide* Exhibit 'AW1/1'; ledger sheet relating to the workman of Employees' State Insurance Scheme Exhibit 'AW1/2'; copy of record of Employees' State Insurance Corporation for the period 01.08.2011 to 01.08.2015 of contribution of the workman having IP No.0173059255 *vide* Exhibit 'AW1/3'; copy of details of the employer bearing Factory / Establishment Name Good House Keeping, employer Code No.17200171450011020 as incorporated in Employees' State Insurance Corporation *vide* Exhibit 'AW1/4'.

11. The workman examined AW2 Anil Yadav - Junior Assistant, Office of GMCH, Sector 32, Chandigarh, who brought the summoned record and tendered into evidence i.e. copy of letter dated 22.03.2012 issued from Office Superintendent (E1), GMCH, Sector 32, Chandigarh to the contractor M/s S. L. Bajaj relating to the subject of deployment of Medical Social Worker on contract basis in GMCH, Sector 32, Chandigarh - Selection thereof incorporating at serial No.2 name of Ms. Priti Satya @ Priti Chhabra W/o Shri Deepak Chhabra, Place of Posting MRD *vide* Exhibit 'AW2/1'; copy of joining report dated 02.04.2012 of Preeti Chhabra in MRD for the post of Social Worker *vide* Exhibit 'AW2/2'; copy of certificate reference No. SLB/362 dated 30.05.2014 whereby the Manager for S. L. Bajaj Contractor, GMCH-32, Chandigarh has certified that Ms. Preeti Chhabra W/o Mr. Deepak Chhabra has worked with their firm on contract basis since 22.03.2012 to till date. She has been deputed to work as Medical Social Worker in Department of MRD at GMCH, Sector 32, Chandigarh *vide* Exhibit 'AW2/3'; copy of letter dated 24.02.2014 whereby Preeti Chhabra after availing without pay leave for 1½ months submitted joining report bearing endorsement dated 24.02.2014 *vide* Exhibit 'AW2/4'; copy of letter dated 04.06.2014 issued from Office of Superintendent (E-I) to M/s S. L. Bajaj, Camp Office GMCH-32, Chandigarh relating to the subject of termination of services of Medical Social Worker on contract basis in the department of Medical Record Department, GMCH-32, Chandigarh *vide*

Exhibit 'AW2/5'; copy of letter dated 29.10.2014 addressed from Additional Director (Admin) to M/s S. L. Bajaj, Camp Office GMCH-32, Chandigarh relating to the subject of deployment of Medical Social Worker on contract basis in GMCH-32, Chandigarh - Selection thereof, incorporating at serial No.2 the name of Preeti Chhabra W/o Shri Deepak Chhabra in the Department of Ophthalmology vide Exhibit 'AW2/6'; copy of letter dated 10.11.2014 addressed from Prof. & Head GMCH, Chandigarh, Department of Ophthalmology to the Additional Director (Admn), GMCH, Chandigarh relating to the subject of deployment of Medical Social Worker on contract basis vide Exhibit 'AW2/7' and copy of sanction given by Director / Principal, GMCH, Sector 32, Chandigarh of wage bill to incur an expenditure on account of payment of wage bill for the period from April 2012 to June 2014 to M/s S. L. Bajaj, Patiala for supplying manpower for paramedical services vide Exhibit 'AW2/8'.

12. The workman Preeti Chhabra examined herself as AW3 and tendered her affidavit Exhibit 'AW3/A' along with documents i.e. copy of letter dated 22.03.2012 issued from Office Superintendent (E1), GMCH, Sector 32, Chandigarh to the contractor M/s S. L. Bajaj relating to the subject of deployment of Medical Social Worker on contract basis in GMCH, Sector 32, Chandigarh - Selection thereof incorporating at serial No.2 name of Ms. Priti Satya @ Priti Chhabra W/o Shri Deepak Chhabra, Place of Posting MRD vide Exhibit 'AW3/1'; copy of movement order dated 02.04.2012 issued by Manager for S. L. Bajaj Contractor, GMCH-32, Chandigarh vide Exhibit 'AW3/2'; copy of the lab test report relating to workman Preeti vide Exhibit 'AW3/3'; copy of application moved by the workman Preeti to HOD, GMCH-32, seeking half day leave for 19.12.2013 vide Exhibit 'AW3/4' and copy of letter dated 24.02.2014, whereby Preeti Chhabra after availing without pay leave for 1½ months submitted joining report, bearing endorsement dated 24.02.2014 vide Exhibit 'AW3/5'.

On 01.02.2022 learned representative for the workman closed evidence on behalf of the workman.

13. On the other hand, management No. 1 & 4 examined MW1 Anil Yadav - Junior Assistant, Office of GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with documents i.e. copy of letter dated 29.10.2014 addressed from Additional Director (Admin) to M/s S. L. Bajaj, Camp Office GMCH-32, Chandigarh relating to the subject of deployment of Medical Social Worker on contract basis in GMCH-32, Chandigarh - Selection thereof, incorporating at serial No.2 the name of Preeti Chhabra W/o Shri Deepak Chhabra in the Department of Ophthalmology vide Exhibit 'MW1/1'; copy of letter dated 10.11.2014 addressed from Prof. & Head GMCH, Chandigarh, Department of Ophthalmology to the Additional Director (Admn), GMCH, Chandigarh relating to the subject of deployment of Medical Social Worker on contract basis vide Exhibit 'MW1/2'. On learned Law Officer for management No. 1 & 4 closed the evidence.

14. I have heard the arguments of learned representative for the workman and learned Law Officer for management No. 1 & 4 and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 :

15. Onus to prove this issue is on the workman.

16. Under this issue learned representative for the workman referred the testimony of AW3 i.e. Preeti Chhabra (workman), who vide her affidavit Exhibit 'AW3/A' deposed all the contents of her claim statement. AW3 supported her oral version with documents Exhibit 'AW3/1' to Exhibit 'AW3/5'.

17. In order to prove the fact that the workman was covered under the Employees' State Insurance Corporation Scheme, learned representative for the workman referred the testimony of AW1 Gurmeet Singh - Assistant, ESIC Branch, Office Chandigarh, who proved documents Exhibit 'AW1/1' to Exhibit 'AW1/4'. In order to prove the fact that the workman was deployed in GMCH, Sector 32, Chandigarh through contractor M/s S. L. Bajaj, learned representative for the workman referred the testimony of AW2 Anil Yadav- Junior Assistant, Office of GMCH, Sector 32, Chandigarh, who proved documents Exhibit 'AW2/1' to Exhibit 'AW2/8'.

18. On the other hand, learned Law Officer for the management referred the testimony of MW1 Anil Yadav- Junior Assistant, Office of GMCH, Sector 32, Chandigarh, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement of management No.1 & 4 and supported his oral version with documents Exhibit 'MW1/1' to 'MW1/2'.

19. From the oral as well documentary evidence led by the parties, it comes out that admittedly *vide* letter dated 22.03.2012 / Exhibit 'AW2/1' the workman was deployed as Medical Social Worker with GMCH, Sector 32, Chandigarh by the service provider / contractor by M/s S. L. Bajaj, Patiala in the year 2012. As per the contents of letter Exhibit 'AW2/1' it is clearly mentioned that as per agreement deed, the candidates deployed as Medical Social Workers on contract basis through service provider (name of the workman at serial No.2) will be the employees of M/s S. L. Bajaj for all intents and purposes and there shall be no relationship of employer & employee either implicitly or explicitly between GMCH and the said employees. There is no dispute with regard to the facts that the workman so deployed by the contractor M/s S. L. Bajaj, Patiala, in the year 2012 were paid wages @ rates fixed by the Assistant Labour Commissioner from time to time and w.e.f. 12.11.2014 as per the rates fixed by Deputy Commissioner, U.T. Chandigarh.

20. The plea taken by the workman that her services were terminated by the management on 06.06.2014 is devoid of merits because there was no relationship of employee & employer between the workman and management No.1 & 4 i.e. GMCH, Sector 32, Chandigarh. Moreover, as per the letter dated 04.06.2014 / Exhibit 'AW2/5' Office Superintendent (E1) of GMCH, Sector 32, Chandigarh informed M/s S. L. Bajaj, Camp Office, GMCH, Sector 32, Chandigarh that as intimated by Head Department of MRD of their institute, Ms. Preeti Chhabra, working as Medical Social Worker is habitual in taking leaves due to which the work of the department is suffering and further made request that the services of Ms. Preeti Chhabra be replaced by providing her substitute immediately. From letter dated 29.10.2014 Exhibit 'AW2/6' it is proved that the workman Preeti Chhabra was deputed as Medical Social Worker on contract basis through service provider with GMCH, Sector 32, Chandigarh in the department of Ophthalmology. As proved from letter dated 10.11.2014 Exhibit 'AW2/7' as well as Exhibit 'MW1/2' the workman Preeti Chhabra did not join the department in compliance of letter dated 29.10.2014 / Exhibit 'AW2/6'. MW1 Anil Yadav in his cross-examination stated that the workman was depute the workman in the department of Ophthalmology in October 2014 but the workman did not join as the report given by HOD, Ophthalmology given on 10.11.2014. The Medical Social Worker can be posted in different department which is deployed by the contractor and not by the GMCH. Volunteered, as per the requirement of GMCH. Learned representative for the workman laid much stress on the fact that AW3 / Preeti Chhabra in her cross-examination has stated that she wrote request application to the then Additional Director, GMCH namely Smt. Amandeep Kaur, PCS for rejoining her duties but she tore the letter at the spot. To my opinion, the aforesaid version of AW3 that Smt. Amandeep Kaur - Additional Director, GMCH tore the letter moved by the workman for rejoining her duties is improved version of the workman as no such plea is taken in the claim statement. The plea taken by the workman that in view of her medical test report Exhibit 'AW3/3' her health did not permit her to join the Ophthalmology is unjustified because the Medical Social Worker is deployed subject to the conditions that the candidate should be medically fit and free from communicable disease and this condition is clearly mentioned in letter dated 23.03.2012 / Exhibit 'AW2/1' and letter dated 29.10.2014 / Exhibit 'AW2/6'. From the discussion made above, it is duly proved on record that the workman herself did not join the Ophthalmology Department despite the fact that she was offered to join the same by service provider / contractor M/s S. L. Bajaj *vide* letter dated 29.10.2014 / Exhibit 'AW2/6'. Thus, there is no termination on the part of the service provider / contractor M/s S. L. Bajaj and there is no relationship of employer & employee between GMCH, Sector 32, Chandigarh and the workman. Consequently, the workman is neither entitled to the reinstatement nor to any consequential benefits.

21. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

22. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 27th September, 2022.

(Sd.). . . ,
(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 21st November, 2022

No. 13/1/9908-HII(2)-2022/17296.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 104/2016, dated 27.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SUMAN KAINTH, AGED 50 YEARS, W/O SHRI DEEPAK KAINTH, R/O HOUSE NO. 547, SECTOR 22-A, CHANDIGARH (Workman)

AND

1. GOVERNMENT MEDICAL COLLEGE & HOSPITAL, CHANDIGARH, SECTOR 32, CHANDIGARH THROUGH ITS MEDICAL SUPERINTENDENT / DIRECTOR PRINCIPAL.
2. KESHAV SECURITY SERVICES, CAMP OFFICE, GMCH, SECTOR 32, CHANDIGARH.
3. KESHAV SECURITY SERVICES, NO. 18, LOCAL SHOPPING CENTRE, 2ND FLOOR, MADAGIR, NEW DELHI-110002.
4. AMANDEEP KAUR, PCS, FORMER ADDITIONAL DIRECTOR (ADMINISTRATION), GMCH-32, CHANDIGARH (Management)

AWARD

1. The workman, Suman Kainth, has raised the demand notice under Section 2-A of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*). After the failure report Memo No.1424 dated 23.05.2016 of the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh the workman has filed the statement of claim under Section 10 of the ID Act alleging therein that the workman was appointed to the post of Data Entry Operator on 01.09.1997. The workman was drawing salary ₹ 7,210/-per month. The workman continuously and regularly remained in the employment of the management from 01.09.1997 to 20.11.2014. During the service period the workman worked honestly and after the satisfaction of the superiors. On 20.11.2014 the management terminated the services of the workman saying that her services are no longer required. The action of the management to terminate the services of the workman is highly illegal, unlawful, unjustified, uncalled for and inoperative, liable to be set aside *inter alia* on the grounds that the workman has completed more than 240 days service in a calendar year. No compensation was given before terminating the services. No written notice was ever given to the workman before terminating her services by the managements. The appropriate Government was informed about the termination of services of the workman. The post is still existing. Juniors and new persons have been appointed to the post of Data Entry Operator. No inquiry was ever held before terminating the services of the workman. The matter was reported to the Labour Inspector concerned but the management was adamant and nothing could be settled. The demand notice dated 29.09.2016 under Section 2-A of the ID Act was raised before the Assistant Labour Commissioner, U.T. Chandigarh but the conciliation proceedings got failed so the matter was referred to this Court for adjudication as per law *vide* Memo No.Nil dated Nil endorsement No.1424 dated 14.03.2016 issued by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The workman has not filed such or similar case earlier in the matter and this is the first case in the subject matter. This Court has got jurisdiction to hear and decide the present case. The workman has got no other remedy except to approach this Court by way of the statement of claim. Prayer is made that the workman may be reinstated into service with full back wages

and all attendant benefits and consequential relief of increments and revised pay etc. be awarded with interest @9% per annum. The seniority may also be granted along with consequential relief and benefits. The statement of claim may be allowed in the interest of justice and award may be passed accordingly.

2. Upon notice, management Nos. 1 & 4 appeared through Law Officer and contested the claim statement by filing written statement on 19.02.2018 wherein it is stated that the workman Ms. Suman was deployed as Data Entry Operator through contractor / service provider M/s Keshav Security Services (P) Ltd., New Delhi in Government Medical College & Hospital (GMCH), Sector 32, Chandigarh. As per service agreement the persons so deployed by the service provider for the execution of agreement shall be his employees for all intents & purposes and in no case, there shall be any relationship of employer-employee between the GMCH and the said persons either implicitly or explicitly. The workers so deployed by the contractor in the year 2012 were paid wages as per the rates fixed by the Assistant Labour Commissioner from time to time. Thereafter, w.e.f. 12.11.2014 it was decided by the competent authority to give wages to the said workers as per the rates fixed by the Deputy Commissioner, U.T. Chandigarh. Mrs. Suman was found absent in MRD during the visit of then ADA on 26.09.2014, due to which the work of the department was suffered. Therefore, the contractor was asked to replace her services by providing her substitute immediately, *vide* their office letter No.GMCH-EIV-EA1(31)-2014/40878-79 dated 18.11.2014. The settlement, if any, has to be made / has to take place between the contractor and the workman. Rest of the contents of the claim statement are denied in a formal manner except para 9 which is denied being matter of record. Prayer is made that the claim of the workman against the answering management may be dismissed with cost being devoid of merits.

3. On notice, management No.2 & 3 appeared through representative Shri K. B. Sharma and contested the claim statement by filing joint written statement on 13.09.2017 wherein preliminary objections are taken on the ground that the present claim statement is not maintainable in the present form. The answering managements are service provider to the various Government as well as other organisation as per their requirement. More so no where the workman had made any allegation / drawback against the answering management. At the time of taking over the contract by the answering management, the workman was already working in the GMCH, Chandigarh i.e. management No.1 under the previous service provider and no appointment letter was issued by the answering management to the workman. Management No.1 *vide* letter dated 18.11.2014 asked the answering management to replace the workman from the GMCH and provide another Data Entry Operator immediately. It was further directed that since the workman was absent from duty without any leave therefore, one week salary of the workman be deducted and she be given strict warning under intimation to the office of management No.1. Despite letter dated 18.11.2014, the answering managements neither terminated the services of the workman nor her salary was deducted. The services of the workman were never terminated by the answering management as alleged by her. Management No.1 *vide* letter dated 07.05.2015 stated the reasons for the termination of the workman i.e. during the surprise visit the workman was found absent from duties. The answering managements have never violated any provisions of the ID Act. The workman is misleading the Court.

4. Further in para-wise reply the facts that the workman was appointed to the post of Data Entry Operator on 01.09.1997 and she was drawing salary of ₹ 7,210/- per month by way of her wages are denied for want of knowledge. It is admitted to the extent that the workman worked under the answering managements and during the service period the workman worked honestly and up to the satisfaction of the superiors. The answering managements never terminated the services of the workman, therefore, the question of compensation, issue of notice and holding inquiry does not arise. No substantial question of law is involved in the present case in view of the preliminary submission *qua* the answering managements as the answering managements have never terminated the services of the workman and never violated Section 25-F, 25-FFF, 25-N of the ID Act. The answering management were never adamant as the services of the workman were never terminated by the answering managements. Rest of the contents of the claim statement are denied as wrong except para 9 to 12 which are replied in a formal manner and prayer is made that the present claim statement *qua* the answering management may be dismissed and reference may be filed.

5. The workman on 04.04.2018 filed rejoinder to the written statement of management No.1 & 4 and on 17.10.2017 filed rejoinder to the written statement of management Nos. 2 & 3 wherein the contents of the written statements are denied and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed *vide* order dated 03.04.2018 :—

1. Whether there is no employer-employee relationship between management No.1 & 4 and workman ? OPM-1 & 4
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
3. Relief.

7. At the stage of workman's evidence, on 13.01.2021 none appeared on behalf of management No.2 & 3. Thus, *vide* order dated 13.01.2021 management No.2 & 3 were proceeded against *ex parte*.

8. In evidence the workman, Suman Kainth, examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A'.

9. The workman examined AW2 Sukhjot Kaur, Social Security Assistant, Employees' Provident Fund Organisation, Sector 17-D, Chandigarh, who brought the summoned record of provident fund of Suman Kainth for the period w.e.f. 01.10.2012 to November 2014 and placed on record certified copy of the same *vide* Exhibit 'AW2/1'. AW2 specifically deposed that the remaining summoning record from 1997 to October 2012 is not with her.

10. The workman examined AW3 Renu Bala - Senior Assistant, GMCH, Sector 32, Chandigarh, who brought the summoned record i.e. attested copy of attendance register incorporating at serial No.18 name of workman Suman Kainth for the period w.e.f. October 2012 to November 2014 and placed on record attested copy of the same *vide* Exhibit 'AW3/1'.

11. The workman examined AW4 Rajesh Lamba - Senior Social Security Assistant, Office of Employees' Provident Fund Organisation, Sector 17-D, Chandigarh, who brought the summoned record pertaining to PF No.PBCHD00219100000000113 establishment name Good Housekeeping (Regd.) along with copy of subscriber's ledger card as on 13.08.2021 incorporating the details of contribution made by the subscriber i.e. Ms. Suman Kainth attested by Shri Ashim Chhabra - Assistant Provident Fund Commissioner and placed on record copy thereof *vide* Exhibit 'AW4/1'.

12. The workman examined AW5 Sukhwinder Singh - Senior Social Security Assistant, Office of Employees' Provident Fund Organisation, Sector 17-D, Chandigarh, who brought the summoned record pertaining to PF Code No.PBCHD00291470000004804 relating to Ms. Suman Kainth along with copy of subscriber ledger card as on 17.08.2021 attested by Shri Kesar Singh - Assistant PF Commissioner and placed on record copy thereof *vide* Exhibit 'AW5/1'.

13. The workman examined AW6 Raj Kumar - Senior Assistant, Establishment IV, GMCH, Sector 32, Chandigarh, who brought the summoned record i.e. attendance register and wages register of workman Ms. Suman Kainth for the year 2000, 2001, 2004 to 2014 and placed on record copies thereof *vide* Exhibit 'AW6/1' to Exhibit 'AW6/13'.

On 04.03.2022 learned representative for the workman closed the evidence.

14. On the other hand, management No.1 & 4 examined MW1 Raj Kumar - Senior Assistant, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'. On 20.09.2022 learned Law Officer for management No.1 & 4 closed the evidence.

15. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 :

16. Onus to prove to this issue is on the management No.1 & 4.

17. The workman has alleged that she was employee of management No.1 & 4 whereas management No.1 & 4 had denied the relationship of employer and employee between management No.1 & 4 on one side and the workman on the other side. The workman, Suman Kainth, / AW1 in her cross-examination conducted by management No.1 & 4 stated that no appointment letter or any relevant document was issued by the management. She was engaged by the contractor namely M/s Sanchi Security and thereafter that the different outsource agencies continue to work with the management. The aforesaid version of the workman / AW1 is her own admission that she was outsource employee deployed at GMCH, Sector 32, Chandigarh through service provider / contractor. Initially her service provider was M/s Sanchi Security. AW1 in her cross-examination further stated that her ESI and EPF might have been deducted by the contractor but she does not know exactly by whom it was deducted. The workman has examined AW2 Sukhjot Kaur - Social Security Assistant, Employees' Provident Fund Organisation, Chandigarh, who has proved into evidence the record of provident fund of Suman Kainth for the period w.e.f. 01.10.2012 to November 2014 and placed on record certified copy of the same *vide* Exhibit 'AW2/1'. AW2 in her cross-examination conducted by management No.1 & 4 stated that the above said documents were submitted by EPFO Office. It is the duty of the employer to deposit the contribution of the employees to the EPFO Department. As per record, the employer code of the workman is PBCHD290147 who had deposited the contribution of the workman. The aforesaid version of AW2 is not controverted by management No.2 & 3 as they did not conduct cross-examination of AW2 despite availing opportunity and the same was recorded as Nil. The workman's own witness AW4 Rajesh Lamba - Senior Social Security Assistant, proved into evidence the record pertaining to PF No.PBCHD00219100000000113 establishment name Good Housekeeping (Regd.) along with copy of subscriber's ledger card as on 13.08.2021 incorporating the details of contribution made by the subscriber i.e. Ms. Suman Kainth *vide* Exhibit 'AW4/1'. When put to cross-examination by management No.1 & 4, AW4 stated that the employer code number PB/CHD/21910 was issued in the name of M/s Good House Keeping. All the deductions were made as per the code issued by EPFO. AW4 admitted as correct that the deductions of the workman were made as per the provisions of EPF and MP Act, 1952. The aforesaid version of AW4 is not controverted by management No.2 & 3 as they did not conduct cross-examination of AW4 despite availing opportunity and the same was recorded as Nil. The workman's own witness AW5 Sukhwinder Singh - Senior Social Security Assistant, Office of Employees' Provident Fund Organisation, Sector 17-D, Chandigarh, who has proved into evidence the record pertaining to PF Code No.PBCHD00291470000004804 relating to Ms. Suman Kainth along with copy of subscriber ledger card as on 17.08.2021 *vide* Exhibit 'AW5/1'. When put to cross-examination by management No.1 & 4, AW5 stated that as per the record, employer code was issued in the name of M/s Keshav Security. The employer is responsible for deductions and deposit the PF in respect of the workman. The aforesaid version of AW5 is not controverted by management No.2 & 3 as they did not conduct cross-examination of AW5 despite availing opportunity and the same was recorded as Nil. Management No.2 & 3 in their written statement specifically stated that they are service provider to the various Governments as well as to other organisation as per their requirement. When management No.2 & 3 taken over the contract, the workman was already working in GMCH, Chandigarh. The management No.2 & 3 in their written statement had taken the stand that management No.1 *vide* letter dated 18.11.2014 asked the management No.2 & 3 to replace the workman from GMCH and provide another Data Entry Operator immediately and further requested to deduct her one week salary due to her absence from duty. But despite the said letter neither they terminated the services of the workman nor deducted her salary. The aforesaid plea taken by management No.2 & 3 suggest that they are the service provider / employer of the workman and the salary is also paid by them to the workman. It is duly proved on record that the workman was deployed in GMCH as Data Entry Operator through the contractor / service provider, which kept on changing from time to time and the last service provider of the workman was management No.2 & 3 i.e. M/s Keshav Security Services,

New Delhi, Campus Office at Chandigarh. Above all the management No.1 & 4 in their written statement pleaded that the workman Ms. Suman was deployed as Data Entry Operator through contractor / service provider M/s Keshav Security Services (P) Ltd., New Delhi in Government Medical College & Hospital (GMCH), Sector 32, Chandigarh. As per service agreement the persons so deployed by the service provider for the execution of agreement shall be his employees for all intents & purposes and in no case, there shall be any relationship of employer-employee between the GMCH and the said persons either implicitly or explicitly. The workers so deployed by the contractor in the year 2012 was paid wages as per the rates fixed by the Assistant Labour Commissioner from time to time. Thereafter, w.e.f. 12.11.2014 it was decided by the competent authority to give wages to the said workers as per the rates fixed by the Deputy Commissioner, U.T. Chandigarh. The workman in the rejoinder to the written statement of management No.1 & 4 stated that the matter of records of employment of workman is not disputed. From the discussion made above, it is duly proved on record that there is no relationship of employer and employee between GMCH, Sector 32, Chandigarh (management No.1 & 4) and the workman.

18. Accordingly, this issue is decided in favour of management No.1 & 4 and against the workman.

Issue No. 2 :

19. Onus to prove this issue is on the workman.

20. Learned representative for the workman by making reference to the testimony of workman / AW4 contended that on 20.11.2014 the management terminated the services of the workman saying that her services are no longer required and the said action of the management to terminate the services of the workman is illegal, unlawful and unjustified, which is liable to be set aside.

21. On the other hand, learned Law Officer for management No.1 & 4 contended that since there is no relationship of employer and employee between GMCH, Sector 32, Chandigarh (management No.1 & 4) and the workman so the question of termination of the services of the workman by management No.1 & 4 does not arise.

22. The management No.2 & 3 in their written statement have taken the plea that they have never terminated the services of the workman, therefore, the question of issuing prior notice and payment of compensation to the workman does not arise. In fact, the management No.1 vide letter dated 07.05.2015 requested management No. 2 & 3 to terminate the services of the workman on the ground that during the surprise visit the workman was found absent from her duty. In cross-examination of the workman / AW1 management No. 2 & 3 have taken the plea that the services of the workman were terminated by GMCH. In this regard, AW1 Suman Kainth in her cross-examination conducted by management No.2 & 3 stated that her services were terminated by the GMCH. To my opinion the plea taken by management No.2 & 3 that the services of the workman were terminated by GMCH, Sector 32, Chandigarh (management No.1 & 4) is not acceptable because none appeared on behalf of management No.2 & 3 in the witness box to prove their written statement and instead of contesting the claim statement by leading evidence, the management No. 2 & 3 preferred to be proceeded against ex-parte. Therefore, the written statement filed by management No. 2 & 3 does not stand proved. Even otherwise, from the written statement of management No. 2 & 3, at the most it is proved that GMCH, Sector 32, Chandigarh requested to management No. 2 & 3 to provide substitute of the workman but management No.2 & 3 neither terminated the services of the workman in pursuance to the request nor there is any evidence of providing any substitute of the workman to management No.1 & 4.

23. The workman did not prove into evidence any termination order. From the cross-examination of MW1 Raj Kumar, conducted by the workman nothing material to the elicited has come on record. Moreover, as proved from the discussion of issue No.1 above, there is no relationship of employer and employee between the GMCH, Sector 32, Chandigarh (management No. 1& 4) and the workman. The plea of the workman that on 20.11.2014 the management terminated the services of the workman saying that her services are no longer required is vague in nature because the workman did not specify whether she was

verbally terminated by management No.1 & 4 or by management No. 2 & 3. There is no evidence of the workman to the effect that she personally appeared or sent any registered post to management No.2 & 3 i.e. her service provider for joining duty on 20.11.2014 or any date subsequently. Consequently, there is nothing on record to assume that the workman was illegally terminated.

24. During course of arguments learned representative for the workman failed to controvert the fact that during the pendency of the present claim, the workman has already attained the age of superannuation. As per the documents on record, the workman / AW1 stepped into the witness box on 06.12.2021 and at that time she was aged 57 years. With the age of superannuation the relief of reinstatement sought by the workman has become infructuous.

25. In view of the reasons recorded above, the workman has failed to prove that her services were terminated illegally. Therefore, the workman is not entitled for any consequential relief.

26. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

27. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 27th September, 2022.

(Sd.). . . ,
(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Nicus Vattathil Benedict, S/o Vattathil Andrews Benedict, R/o House No. 1149-A, Sector 20-B, Chandigarh, have changed my name from Nicus Vattathil Benedict to Vattathil Benedict Nicus *vide* affidavit dated 18/11/2022 at Chandigarh.

[900-1]

I, Gurvinder Kaur, W/o No. JC-237669N Late Amrik Singh, # 393/2, Sector 45-A, Chandigarh, have changed my name to Gurvinder Kaur Minhas and my correct D.O.B. 23-05-1964.

[901-1]

I, Neerja Rani, W/o Sh. Rajeev Kumar, R/o # 1455, CHB Complex, MIG, Sector 61, Chandigarh, have changed my name to Neerja Kanwar.

[902-1]

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